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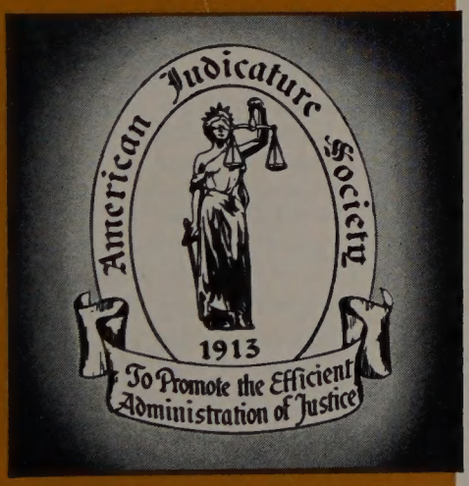

AMERICAN JUDICATURE SOCIETY • CHICAGO, ILLINOIS

The American Judicature Society

TO PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE

Founded in 1913 by Herbert Lincoln Harley

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The Journal is a clearing house of fact and opinion with respect to all phases of the administration of justice and its improvement. Readers are invited to submit news of developments in their localities and articles for publication, which should be preferably not more than 3,000 words or ten pages of manuscript, double-spaced. Views and opinions in editorials and articles are not to be taken as official expressions of the Society's policy unless so stated, and publication of contributed articles does not necessarily imply endorsement in any way of the views expressed therein. Permission is hereby given to quote from or reprint, with credit, any article or editorial originating in this or any other issue.

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Journal of The American JUDICATURE *Society*

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GLENN R. WINTERS, *Editor*

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CONTENTS

Caryl Chessman and Quick Justice

IT IS SAID that in ancient Greece a man burned a public building and was put to death for it, preferring to be remembered infamously rather than not at all.

Caryl Chessman is now gone, and it seems that he, too, has achieved a kind of dubious immortality. Possibly no other individual in America has had his personal problems engage the attention of the Supreme Court of the United States so many times. Like William Marbury, an obscure District of Columbia justice of the peace, and Dred Scott, a Missouri slave, Caryl Chessman's name is engraved in the legal history of America, if nowhere else.

Already he is responsible for some hundreds of pages in the California and federal reports, and the law review and other collateral discussions of the case are just beginning. Edmond J. Clinton's article in this issue is part of it, and so is the excellent summary and analysis of it which appears in the April, 1960, Minnesota Law Review. There will be many more.

We do not have the answers to all of Mr. Clinton's troublesome and searching questions, but we do have some observations to make on the case in the light of today's judicial reform movement.

One important fact which had a great deal to do with prolonging the litigation was the death of the court reporter before his highly personalized

notes had been transcribed, and the subsequent struggle to obtain from them an adequate transcript of the proceedings at the trial. In 1948, when the trial took place, sound recording of courtroom proceedings was in its early stages and had not gained a very wide acceptance. Now, however, in Alaska, in Puerto Rico, in parts of the federal judiciary and in some states, there are courts that rely upon sound recording for the record of the trial. In many more courts the reporter uses auxiliary sound equipment in aid of his own note-keeping. If a sound record of the Chessman trial on either basis had been made, the transcript would not have been the subject of litigation that it was. Courts and bar associations should see to it that the situation is not permitted to arise again.

Chessman's offenses were against the laws of California, and yet much of the litigation was in the courts of another jurisdiction, the federal. This has puzzled foreign observers, and many Americans are concerned about abuse of *habeas corpus* and the interplay of the two jurisdictions to delay justice.

There was once a time when the danger of denial of federal rights in a state court may have been a real one, especially to out-of-state litigants, and the right of appeal to a federal court for their vindication a valuable one. Chessman, however, was a California citizen, tried in his own state. The supposition that those courts were less aware of the federal than of the state constitution is unreal. It has simply become routine for the defendant who can afford it to allege violation of federal rights after he has run the gamut of the state courts, and the only thing accomplished is delay.

This problem was a topic of discussion at the organization meeting of the Conference of Chief Justices in 1949. Just last month, Governor Edmund G. Brown of California, addressing the National Conference of Attorneys General, called upon that organization to assume leadership in bringing an end to "the endless round robin spiral of protracted litigation, which swings—by appeal, by certiorari, by writ and review, hearing and rehearing—from court to court . . . asserting and reasserting in hardly altered fashion essentially the same disputed issues."

We are not sure at this point just what the answer is, if there is one, but if the Chessman case can provide the impetus for a businesslike attack upon this perversion of American federalism, it will have left a by-product of great value.

A matter that appears to have been much less talked about is the inadequacy of Chessman as his own counsel. He declined assigned counsel, accepted the public defender only as a legal adviser, and while he showed some skill in cross examination, his defense as a whole was a poor one.

We do not suggest that any more pressure should have been put on him to accept a lawyer's service. The judge discussed it with him at length and he knew just what he was doing and the risks he was taking. If there is anything worse than having no counsel, it is antagonistic or indifferent counsel forced upon an unwilling client.

The incident does point up a few things, however, about representation by counsel. One of them is that there is no substitute for it. The old saying that the man who acts as his own lawyer has a fool for a client has been proved again. It is the responsibility of the legal profession to make sure that no defendant goes to his death or to prison because of lack of an adequate legal defense. Chessman elected to take that chance, but more often it has come about in quite a different way.

One night in June, 1937, in a small town in a midwestern state, two boys attempted to burglarize a gas station. One of them was 18 years old, a novice in crime. Two policemen saw and arrested them and they surrendered. One of the policemen was violently abusive and precipitated a scuffle in which shots were exchanged. The other policeman was mortally wounded and died the next day. There was a great public

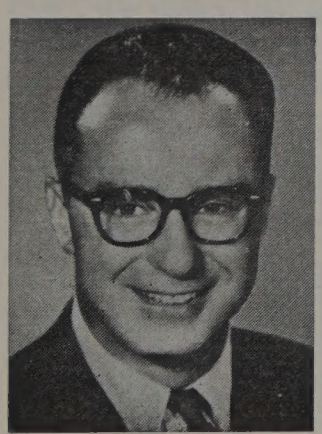
outcry—a demand for quick justice. The one boy was denied all communication with relatives or friends, and he had no lawyer. He was shown an angry mob milling around on the outside and was told that if he did not plead guilty they would come in and get him. He threw himself on the mercy of the court, and found none. Just 32 hours after his arrest and two hours after his arraignment he was found guilty of first degree murder, on no evidence other than his own confession, and was sentenced to prison for life. If his state had had capital punishment, he would have gone quickly to the electric chair.

When the other boy's case came up, his mother asked for time to get a lawyer. After full and deliberate trial he was found guilty of second degree murder and sentenced to a prison term which has long since expired. The first boy, no more at fault than his companion, is in prison today, because he had no counsel and because there was more interest in quick justice than in just justice.

This, we say, and not Chessman's writs and rehearings, is the shame of American justice. The worst that can be said about the Chessman case (apart from the side issue of capital punishment) is that the courts leaned over backward in listening too attentively to his arguments and pleas. We are sorry that so much time was taken and that so much of the taxpayers' money was spent. But we should much prefer that American justice be judged by the Chessman case than by that of the boy burglar. Let us end this sort of "quick justice" before we even start on the Chessman variety of slow justice.

HAWAII GOVERNOR TO ADDRESS ANNUAL MEETING AUGUST 31

THE Honorable William F. Quinn, governor of Hawaii, will address the annual meeting of the American Judicature Society in the Statler Hilton Hotel, Washington D.C., Wednesday, August 31, 1960. His subject will be "Judicial Administration and Selection—Old Problems in Our Newest State."



Governor Quinn

The meeting will be at breakfast, beginning at 8:00 a.m., in the Congressional Room of the Statler Hilton. In addition to Governor Quinn's address, the program will include reports of officers and committees and the annual election of directors and officers.

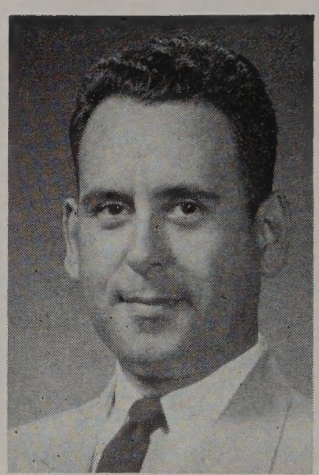
Governor Quinn is one of America's most dynamic young governmental leaders. Born in Rochester, N.Y., in 1919, he is a graduate of St. Louis University and Harvard Law School. During the war he served in the U.S. Naval Reserve, where he attained the rank of Lieutenant Commander. An active civic leader in his home state, he has been a member of the Hawaii Statehood Commission and of the City Charter Commission of Honolulu. He is a lawyer, and a member of the executive board of the Bar Association of Hawaii.

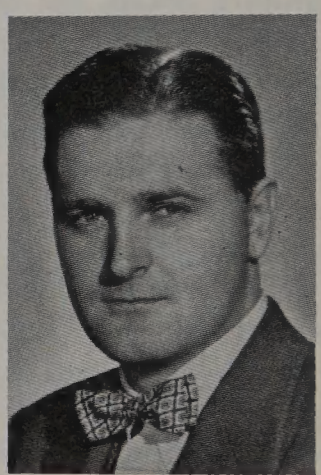
All persons, including ladies, are invited to the meeting, whether or not they are members of the American Judicature Society. Tickets will be on sale at the American Bar Association convention headquarters in the Statler Hilton. Accommodations in the Congressional Room are limited, and persons desiring to be sure of a place at the breakfast may purchase tickets in advance by sending $3.00 per ticket to the American Judicature Society 1155 East Sixtieth Street Chicago 37, Illinois.

JUDGES IN UNIFORM

An Independent Judiciary for the Army

by Robert M. Mummey and Thomas F. Meagher, Jr.





MAJOR MUMMEY, (left), a member of the Illinois Bar, and CAPTAIN MEAGHER, a member of the Massachusetts Bar, teach at the Judge Advocate's School of the United States Army in Charlottesville, Virginia.

INTEGRITY, fairness and independence characterize the criminal trial judge in the nearly universal conceptions of the English-speaking world. These qualities are deemed essential to the discharge of the office. They are fostered and nurtured by the circumstances of tenure and freedom from influence which insulate the civilian jurist from undesirable pressures. But what is, or has been, the situation of the military judge? Is the growth of these qualities encouraged by the conditions surrounding the military judge, the "law officer"? What has been done over the years to alter those conditions to this end? What is being done today? It would seem that members of the profession generally—but certainly those interested in judicial administration—should want the answers to these questions.

Perhaps a preliminary question has occurred to some of our readers: Is there such a functionary as a "military judge"? We propose to review briefly the inception and development of a judge-like role on the court-martial scene, to disclose the impact on this role of the decisional law of the last eight years, and to describe a very recent reorganization of the office of the Judge Advocate General of the Army which will undoubtedly have important and desirable effects on the role of our military judge.

Modern military law can be said to date from the enactment of the 1920 Articles of War. A significant innovation in this code was the creation of a "law member." In empowering certain military commanders to appoint general courts-martial, Congress provided, in Article of War 8,[1] that such appointing authorities would detail, as a

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The opinions and conclusions herein expressed are those of the individual authors and do not necessarily represent the views of either the Judge Advocate General's School or any other government agency.

1. Sec. 1, Chapter II. Art. of 4 June 1920 (41 Stat 794; 10 USC 1479, 1946 ed.; repealed by subsec. 14(a), Art. of 5 May 1950, 64 Stat 147).

member of each general court-martial, an officer of the Judge Advocate General's Department as law member, but permitted, when such a person was not available, appointment of a specially qualified officer from some other branch of the army, for that duty. The law member's functions, in addition to those of a court member, were to rule finally on the admissibility of evidence, and to rule on other interlocutory questions, other than challenges, subject to objection by a fellow court member, with resultant disposition of the issue by a majority vote of the members.[2]

Article of War 8, as originally proposed, contemplated that the law member would be required to be an officer of the J. A. G. D., or one whose qualifications for such duty had been approved by the Judge Advocate General.[3] It is unfortunate that this latter feature of the draft was abandoned as the term "specially qualified" in A. W. 8 was generally understood to require not a person possessing a formal legal education but merely one experienced in court-martial procedure and military law. And when an accused finally challenged the appointment, as law member, of such a "specially qualified" officer, to a court-martial of which the prosecutor was a J. A. G. officer, the Supreme Court found that determination of the availability of a J. A. G. officer for service as a law member was within the discretion of the appointing authority, and that assignment of the J. A. G. officer to another role in the same trial was not an abuse of discretion.[4]

The second World War again generated a demand for reforms in military criminal law, which resulted in enactment of the 1949 Articles of War,[5] in which the original version of Article of War 8 was resuscitated. The 1949 article required the appointing authority of each general court-martial to detail to the court a law member, who was required to be (1) a member of the highest bar of a state court, or of the federal bar, and (2) certified by the judge advocate general as qualified to act as law member. Article of War 31 was modified to make final all rulings by the law member on all interlocutory questions except those pertaining to the accused's sanity. The right of fellow members to object to a ruling amounting to a directed verdict of acquittal was continued. Additionally, the law member was charged with the responsibility for instructing his fellow members, prior to a vote on the issue of guilt, of the presumption of innocence. Such advice had to be given in open court[6] and recorded verbatim.[7]

Separation From Jury

The final phase in the evolution of the military trial judge began with the enactment of the Uniform Code of Military Justice,[8] Article 26[9] of which required the same qualifications for the law officer, as A. W. 8 of the 1949 Code had established for the law member. Additional strictures of Article 26 render ineligible to be a law officer one who is an accused or witness for the prosecution, or who has acted as investigating officer or counsel, in the same case. Finally, the law officer is forbidden to consult with court members out of the presence of counsel and the accused except when assisting the court to prepare a formal announcement of their verdict previously arrived at. Thus, for the first time, the law officer is shorn of his fact-finding duties, power to vote on a verdict and sentence, and completely separated from the

2. A. W. 31.
3. Hearings before a subcommittee of the Senate Committee on Military Affairs on S. 64, 66th Cong., 1st Sess., 5 (1919).
4. Hiatt v. Brown, 339 U. S. 103, 94 L. ed. 691, 70 S. Ct. 495 (1950).
5. Sec. 1, Chap. II, Act of 4 June 1920 (41 Stat 787) as amended by acts of 20 August 1937, 50 Stat 724; 14 December 1942, 56 Stat 1051; and 24 June 1948, 62 Stat 627 (10 USC 1479, 1946 ed.; repealed by subsec. 14(a), Act of 5 May 1950, 64 Stat 147).
6. Subpar. 78*d*, Manual for Courts-Martial, U. S. Army, 1949.
7. Note, Appendix 5, MCM, 1949, 355.
8. 10 USC 801-940 (1952 ed., Supp V).
9. 10 USC 826 (1952 ed., Supp V). (To find the Code section, add 800 to the number of the article.)

military jury.

This separation was definitely an elevation. With more extensive authority, coordinate with his new stature, the law officer rules finally on all interlocutory questions, excepting a challenge, or a motion raising the accused's mental responsibility. However, a ruling amounting to a directed verdict of acquittal is still subject to objection by a member, with resultant disposition of the issue by a majority ballot. In just about all other matters, his ruling is final.[10] Besides determining the admissibility of evidence, the law officer rules finally on a request for continuance,[11] a request for a mistrial,[12] and is required to charge the military jury on the law of the case, including the presumption of innocence, and the burden of proof.[13]

Law Officer a Judge?

Although the law officer has many of the responsibilities and performs most of the functions of a judge in a criminal trial, there is some doubt that Congress intended to effect such a radical change from the law concept.[14] A forceful and persuasive argument can be made that the law officer was to enjoy the status of a federal judge only insofar as Congress specifically so provided.[15] Whatever the intent of Congress, the United States Court of Military Appeals[16] has insisted that the law officer discharge his duties in the image of a federal judge. This has been especially true in the area of the charge to the jury—or the "instructions to the court" as that function is described in the military jurisdiction.[17] The task of the law officer has been made more difficult by the Court of Military Appeals' refusal to apply to the accused's defense counsel at the trial the same standards applied by other appellate courts to defense counsel in the civilian criminal courtroom. Only recently, and then with reluctance, has this court abandoned its position that an accused does not waive an instructional error by failing to object at that time, or during a hearing in chambers on proposed instructions.[18] In addition, in those areas in which the law officer is vested with discretion, use too often has been held to be abuse.[19]

A serious problem has been the refusal of the court to indulge a presumption of regularity when appellate claims of error or misconduct by the law officer are urged. An extreme example is found in *United States* v. *Smith*,[20] in which the accused was charged with murder and rape, each of which offenses involved a different time, place, and victim. The law officer, accompanied by the court reporter, was summoned to the jury room, presumably to draft a formal announcement of the verdict.[21] However, upon his arrival, the court endeavored to persuade the law officer to reverse his prior ruling excluding a putative "dying declaration," which the law officer declined to do. The entire colloquy was recorded verbatim, transcribed, and appended to the record as an appellate exhibit. The court acquitted the accused of the charge of murder, to which the supposed dying declaration related, but convicted him of the unrelated rape charge.

10. Art. 51.
11. U. S. v. Knudson, 4 USCMA 587, 16 CMR 161 (1954).
12. U. S. v. Stringer, 5 USCMA 122, 17 CMR 122 (1954).
13. Art. 51(*c*).
14. The arguments pro and con are admirably marshalled and well-documented by excerpts from the legislative history of the Uniform Code in Miller, "Who Made the Law Officer a 'Federal Judge'?", 4 Mil. L. Rev. 39-77 (D. A. Pamphlet No. 27-100-4, April 1959).
15. id.
16. Created by the same statute that elevated the law officer. See Article 67.
17. e.g. U. S. v. Clark, 1 USCMA 201, 2 CMR 107 (1952), U. S. v. Crowell, 9 USCMA 43, 25 CMR 305 (1958).
18. U. S. v. Morphis, 7 USCMA 748, 23 CMR 212 (1957).
19. e.g. U. S. v. Plummer, 1 USCMA 373, 3 CMR 107 (1952); U. S. v. Sizemore et al., 2 USCMA 572, 10 CMR 70 (1953); U. S. v. Epperson, USCMA, CMR (Docket No. 12, 874, decided 14 August 1959).
20. 1 USCMA 531, 4 CMR 123 (1952).
21. This proceeding, authorized by Art. 39, was new in military law, and in effect only 30 days at the time of this trial. The law officer was totally unfamilar with the proceeding.

The Court of Military Appeals, Latimer, J., absent, reversed the rape conviction and ordered a retrial. This reversal was premised on the precedent of *United States* v. *Keith*,[22] an excerpt from which is illuminating. In denying an allegation that the military's "harmless error" rule[23] was being eviscerated, the court stated:

> Since we have based our resolution of the limitation imposed by Article 59a, supra, upon the concept of general prejudice, it is unnecessary to assess in detail the possibility or probability of specific and individual prejudice in this case . . . Once the tradition of non-participation [in the jury's deliberations] is well established in the service, it may be possible to assess the occasional lapses in terms of specific prejudice. Until such time as the present system is firmly settled, we shall not pause to inquire into the specific nature of the law officer-court consultations where that consultation is patently illegal.[24]

In a latter case, Judge Latimer commented as to the *Smith* decision:

> The entire proceedings were reported and reveal that the action of the law officer was most favorable to the accused. . . . I believe I can fairly say that the error of the law officer saved the accused from a murder conviction. Nevertheless, the court, in disposing of the case on review, reversed.[25]

The tradition of non-participation in the jury's deliberations was found to be well established by 1955, from which date the harmless error rule has controlled.[26] Thus while the court requires the law officer's performance to match that of a federal trial judge, where error or misconduct by the law officer is alleged, the court has in many cases cast upon the government the appellate burden of disproving such an allegation and has, in some cases, even refused to grant the government an opportunity to dispel "the appearance of evil."[27] Undoubtedly the court has been influenced by its fear of the possibility of improper command influence. " . . . a problem of such overwhelming importance in the scheme of military justice that it may be said to lie at the very core of the Code. It is our profound conviction indeed, that, in the absence of this problem, literally there would have been no Uniform Code of Military Justice and no Court of Military Appeals."[28]

A Part-Time Judge

A look at the implementation of the law officer concept indicates some apparent basis for the court's fear. Initially virtually all J.A.G. officers above the grade of lieutenant were certified as qualified for law-officer duty. Consequently, every general court-martial jurisdiction contained at least one law officer, in addition to the staff judge advocate. In most instances, the law officer had only limited experience in military justice and none in a judicial role, as graphically evidenced by early appellate decisions. As late as 1956, of 636 J.A.G. officers eligible for certification as law officers, 582 had been so designated. These included 131 majors and 150 captains, almost half the total. A Department of Army study of 2,130 general courts-martial tried in the first half of 1957 disclosed that in only one-fifth was the law officer a lieutenant-colonel or colonel. Although 179 law officers participated in these 2,130 trials, 42 of them participated in only one case, 38 tried from 2 to 5 cases each, and 34 tried from 6 to 10 cases each. Only 6 of the law

22. 1 USCMA 493, 4 CMR 85 (1952).
23. Art. 59(*a*): "A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused."
24. 1 USCMA 493, 496, 4 CMR 85, 88.
25. Latimer, J., in U. S. v. Woods et al., 2 USCMA 203, 221, 8 CMR 3, 21 (1953). The indiscriminate application of the doctrine of "temporary general prejudice," to insure acceptance of a court-approved practice has been characterized thus: "Errors beneficial, may be deemed prejudicial, When principles indwelling require further jelling."
26. U. S. v. Allbee, 5 USCMA 448, 18 CMR 72 (1955).
27. As evidenced by the declaration of Brosman, J., in U. S. v. Adamiak, 4 USCMA 412, 418, 15 CMR 412, 418, that "This Court—in considering cases involving the so-called 'closed conference'—has been willing unhesitatingly to apply the doctrine of 'general prejudice.' We created, in short, *an irrebuttable presumption of prejudice* . . . " (Emphasis added)
28. Brosman, J., in U. S. v. Navarre, 5 USCMA 32, 43, 17 CMR 32, 43.

officers sat in as many as 50 cases each during the 6 months involved. Thus only 6 out of 179 active law officers (and 582 certified law officers) presided at more than 30 per cent of the trials conducted during the period!

Law Officers Under the Code System

These statistics serve to show that under the code system, as initially operated, most law officers were, at best, part-time judges. How does this come about? There is normally a six-attorney office in each headquarters exercising general court-martial jurisdiction. The law officer will probably be the staff judge advocate's most senior assistant, and as such his executive, who will act in the staff judge advocate's absence. As law officer, he must be insulated from all military justice matters in the office. Having helped the accuser draft the formal pleadings, he cannot thereafter participate as law officer in that case, even though such assistance is limited to filling in blanks in a form specification with such insignificant information as dates, places, and the identity of the accused and his victim.[29] He cannot render, as acting staff judge advocate, advice to the convening authority recommending trial, without disqualifying himself for assignment to the case as law officer.[30] Disqualification may result from the law officer's having become familiar with the case, through any means other than the bare pleadings.[31] This requires, of course, that the prospective law officer must avoid, in the course of his normal duties, any contact with the pre-trial or any other criminal investigation. Even though he may study the pleadings in a pending case, the law officer may not point out to the prosecutor or staff judge advocate any defects he may find, nor suggest any amendments,[32] and he certainly cannot communicate with his superior during the trial, as to continuance or other matters.[33]

By way of analogy, imagine, if you can, a federal judge who is also an assistant U. S. Attorney. He sits only on the criminal side, and there are not enough prosecutions to occupy a substantial part of his time. Thus he frequently deals with non-criminal matters, as an assistant to the U. S. Attorney. He may participate on behalf of the United States, in the trial of a Federal Tort Claims Act suit, either to effect a settlement, or as a trial attorney, representing the government's interests as a party. Subsequently he is assigned as judge to preside at the trial of a Dyer Act violation involving the same government employee and facts with which he familiarized himself in the earlier FTCA matter. Such a conflict has frequently confronted the law officer, despite efforts to insulate him against inadvertent disqualification.

Again, supposing that the U. S. Attorney has instituted a proceeding on a complaint, and our Assistant U. S. Attorney, in his role of part-time judge, is compelled to direct a verdict of acquittal, or feels it necessary to deny a badly-needed continuance to the U. S. Attorney, with resultant collapse of the government's case. This should give some idea of the problems of a part-time law officer working in a judge advocate section. He is constantly in danger of disqualification, and there are many instances where, in a particular case, detached reflection, is difficult, if not impossible.[34]

Of more concern to those responsible for the administration of military justice has been the failure of the system to develop and maintain a group of truly professional trial judges. With the army's need to change each officer's assignment roughly every three years—and with the more senior

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29. U. S. v. Renton, 8 USCMA 679, 25 CMR 201 (1958).
30. Even where the regularly assigned staff judge advocate had drafted the advice and left no room for the exercise of discretion by his assistants. U. S. v. Schuller, 5 USCMA 101, 17 CMR 101 (1954).
31. U. S. v. Fry, 7 USCMA 682, 23 CMR 146 (1957).
32. U. S. v. Mortensen, 8 USCMA 233, 23 CMR 43 (1957).
33. U. S. v. Kennedy, 8 USCMA 251, 24 CMR 61 (1957).
34. e.g., NCM 228, Conway, 11 CMR 625 (1953).

officers being assigned to executive positions which precluded their utilization as law officers—few officers sat on enough cases[35] over a long period of time to develop real expertise. Additionally, as so many officers were used and, in each individual case, were selected from so small a group of available officers, the caliber varied too much to be satisfactory.

Shortly after Major General George W. Hickman, Jr., became the Judge Advocate General of the Army, Colonel Edward T. Johnson, having become familiar with the law officer problem as a staff judge advocate and as chief of the Military Justice Division of the J.A.G.O., proposed that serious study be given to "an overhaul of the law officer situation". With General Hickman's blessing the study mentioned above was undertaken in 1957.

The study culminated in these findings:

a. The system in existence was materially defective, in that:
   (1) It creates the appearance of and the potential for improper influence of the judicial function by convening authorities and their staff judge advocates; and
   (2) It fails to provide readily available, fully competent personnel for such duty when and where needed.
b. A good system should take cognizance of the following:
   (1) In view of the increasing complexity of military criminal law, judicial duty should be an exclusive, full-time assignment.
   (2) Since fewer officers will be needed, care should be taken to select only those officers best qualified by maturity, experience, training, and temperament. Normally such an officer will have attained the grade of lieutenant colonel.
   (3) Each officer must want the assignment.
   (4) Each judicial officer must be afforded the utmost practicable autonomy in the exercise of his judicial functions.

From these findings Colonel Johnson and those associated with him evolved a proposed system of circuit riding judicial officers. The circuits were carefully charted, using available statistical data, to insure that each officer would have a sufficient case-load to occupy his workday but allow for professional study to keep abreast of the rapidly changing law. A pilot program was operated in two judicial areas for six months starting in January, 1958.

Even before the end of the pilot program, evaluation of the system by professional and line personnel alike indicated favorable acceptance. Finally the program was explained to all major commanders and to all staff judge advocates assigned to headquarters exercising general court-martial jurisdiction. The overwhelming majority of those officers approved the concept, and while some entered limited objections, only a few were firmly opposed to the proposed system. After being briefed on the results of the pilot program,[36] the Chief of Staff and the Secretary of the Army approved implementation of the program on a world-wide basis. In order to inaugurate the program with the least disturbance to the personnel system and to effect the greatest possible economy in expenditure of travel funds it was decided to activate the areas individually as the selected officers became available. The final area was staffed by the end of 1959.

The System In Operation

So far we have talked about the genesis of the system, the need for it, and the characteristics desirable in it. Now we are ready to describe what it is and how it operates.

As many readers will know, the army is organized geographically in major commands. Within the United States those commands are the numbered armies, the first through the sixth. Roughly these armies encompass the following areas: the first, New England and New York; the second, the Middle Atlantic; the third, the Southeast; the fourth, the Southwest; the fifth, the Midwest from Indiana; and the sixth, the West Coast. Overseas major com-

35. 42 officers tried only one case each and 38 tried only two to five cases each in the six months period.

36. Staff Study, JAGJ, 57/8312, 26 June 1958.

mands include the United States armies in Europe, the Pacific; the Caribbean, and Alaska. The geographic boundaries of these commands have been generally utilized in establishing "judicial areas." The areas are subdivided into "judicial circuits" which are serviced by one or two judicial officers, depending upon the case-load. The senior judge within each area is the "chief judicial officer" and is responsible for coordination, professional administration and efficiency reporting in his area.

A total of 33 judicial officers is the planned requirement. Each officer is assigned to the "Field Judiciary Division" in the office of The Judge Advocate General of the Army. Although, understandably, the senior officers in J.A.G.O. are very interested currently in the operation of this program, it is clear that the division will have substantially the same autonomy as the Boards of Review. The chief of this division is, fittingly, Colonel Edward T. Johnson. The division office in the Pentagon will normally be staffed by, in addition to the chief, one or two judicial officers who will service courts-martial in the Washington area and also be available to help out anywhere in the world when a backlog of cases develops or a complicated, lengthy trial might tie up the regular judge for too long a period. This office will also have a more junior officer, to handle administrative and budgetary matters. All other judiciary officers will be given duty stations at the most economically advantageous point on their circuits. Significantly, these officers will not be assigned to any of the commands in which they sit as judges. One incident of the old system, which has occasioned speculation regarding improper influence, is thereby eliminated.

No additional manpower has been required since the reduced workload on the judge advocate sections in the field permitted reassignment of nearly all the officers from those sources, with a few officers supplied by the J.A.G.O. Cost of the program—primarily travel expenses—will approximate $60,000.00 per year. A substantial portion of this sum was expended under the old system in the borrowing of law officers between commands. It has been estimated that the savings in connection with the avoidance of reversals on appeal will average $120,000.00 per year.

In operation the plan works substantially as follows: Each circuit judicial officer is provided quarters at his duty station and the usual logistic support—commissary, post exchange, etc. He is given a private office, provided with the essential library, telephone answering service, stenographic service and transportation. The judge works up a schedule for his circuit which will normally provide for his sitting at each jurisdiction at least twice a month.

It is recognized that varying case-loads and unusual cases will require flexibility. When necessary the judge can arrange with a judicial officer in an adjoining circuit to fill in for him. This practice will take care of most problems like vacations, short illnesses, disqualifications, etc. When a major problem develops the main office at the Pentagon is called on.

It is obviously too early to attempt to assess the program from the aspect of the elimination of error by the law officer at the trial. Some early statistical sampling indicates a substantial reduction in reversible errors was achieved in the pilot program areas. The Court of Military Appeals has commented favorably on it.[37]

One thing seems sure. At a time when various proposals for amending the Uniform Code of Military Justice are under consideration, the army's effort to improve the quality of its judges and to insulate them from improper influence, will, and should, have substantial influence on any legislation in this area.

37. See the annual report of the U.S.C.M.A. and T.J.A.G.S. of the armed forces to the Congress, pursuant to the Uniform Code of Military Justice, for the period January 1, 1959, to December 31, 1959, at page 35.

THE APALACHIN TRIAL:

Further Observations On Pre-Trial In Criminal Cases

by IRVING R. KAUFMAN

IRVING R. KAUFMAN is a judge of the United States District Court for the Southern District of New York. His previous article, to which this is a sequel, was "Pre-Trial in Criminal Cases," 42 J. Am. Jud. Soc. 150 (February, 1959). The Apalachin case, United States v. Bonanno, *is reported in 177 Federal Supplement 106.*

MORE than a year ago I wrote in this Journal of the use of pre-trial in the criminal case. I attempted to point out at that time that while pre-trial had been used only sporadically in criminal cases, those limited excursions had proven so successful that a wider application was indicated.

Since the publication of my previous article I have had occasion to preside at the so-called Apalachin trial *(United States* v. *Bonanno, et al.)* My experiences in that case have led me to give further thought to the problem of managing criminal trials.

Initially, I should like to make clear that nothing I have learned since my prior article has lessened my belief in the efficacy of criminal pre-trial. It is without hesitation or skepticism that I recommend its discriminate and selective use. Through the use of criminal pre-trial, along with certain other procedures to be discussed below, a fairer, shorter and more intelligent proceeding can be had.

Pre-trial in the criminal case can never be used, however, as "settlement proceedings", wherein the defendant attempts to negotiate a plea of guilty in return for certain guarantees as to the sentence. Furthermore, it cannot be conducted if the defendant is opposed to the proceedings, for it would then violate his constitutional safeguards. One of the keys to the successful utilization of pre-trial in criminal cases is the recognition that it must be voluntary in all respects. But, once we realize that the true function of pre-trial in the criminal case is to bring about a trial in which all the defendant's rights are protected with the least confusion and loss of time, we shall have come a long way towards recognizing that an intelligent approach by *all* the parties will always include a consideration of pre-trial procedures.

In the years 1957 and 1958 I presided over the trial of two large conspiracy cases, *United States* v. *Lev,* and *United States* v. *Stromberg.* My experience with those cases convinced me that the co-operation of criminal lawyers could be obtained. For, was it not to their advantage and to the ad-

vantage of their clients, that they not spend one day more than was necessary for the fair adjudication of guilt or innocence?

Obtaining that co-operation in the careful prior planning of the trial was all the more important in the Apalachin case. It included elements of the most vexatious aspects of both *Lev* and *Stromberg*. Like *Lev*, it presented the problem of dealing efficiently with many exhibits. Like *Stromberg*, it involved a large number of defendants. Furthermore, the Apalachin case presented many more difficult questions of law and evidence than were presented in either *Lev* or *Stromberg*.

Scope of the Problem

The purpose of this article, therefore, is to present a summary of the techniques used in the Apalachin case. To make that summary meaningful the scope of the problem involved must be made clear. The Apalachin trial arose out of an indictment charging 27 defendants and 36 co-conspirators with conspiracy to obstruct justice and to commit perjury. The "means" clause of the indictment alleged, among other things, that the conspiracy was carried out by giving false, fictitious and evasive testimony to sundry law enforcement agencies and individuals, both state and federal, including federal grand juries. The mountainous task that faced the Court, jury and litigants becomes apparent, when the following statistics are considered: When the trial began there were 21 defendants on trial, (I directed a verdict of acquittal as to one defendant at the conclusion of the government's case) and 42 alleged co-conspirators (not on trial).

The prior oral and transcribed statements in furtherance of the conspiracy of all proven co-conspirators were relevant evidence. This resulted from the fact that the indictment charged, in effect, a conspiracy to commit verbal crimes (e.g. perjury). Thus a great deal of the proof of the existence of the conspiracy necessarily consisted of instances of those verbal acts in furtherance of the scheme. This not only raised the enormous difficulties of document management, but it also resulted in difficult questions of admissibility. These evidentiary issues were continually raised by the defense. Hundreds of pages of briefs were directed to presenting various aspects thereof. Thus, even while the actual presentation of evidence was taking place, the Court was continually engaged in determining complex legal and evidentiary problems demanding extensive research. Because of the number of the defendants and the publicity which had preceded the trial, a panel of over 200 prospective jurors was available from which to select the trial jury. From this panel 12 jurors and 4 alternates were selected, after approximately 150 prospective jurors had been excused by the Court or peremptorily challenged. The usual 10 challenges available to a defendant in a criminal case were extended to 42 by the Court. The *voir dire* examination alone consumed the greater part of three days.

Approximately 95 pre-trial motions were made and disposed of in advance of the trial date. In addition, two hearings in connection with motions were conducted, consuming several days. Five written opinions were filed by the Court, totalling 116 pages. Approximately 208 requests to charge were examined and ruled upon separately in advance of summations. Over 700 exhibits were marked for identification prior to trial, totalling many thousands of pages. Approximately 2,500 pages of documents were mimeographed and turned over to defense counsel in advance of the trial and an additional 4,500 pages of prior testimony were made available for inspection. In addition, about 27,500 pages of relevant prior testimony were in the government's possession and could have been offered. The Court was forced to examine more than 50 extensive government reports pursuant to the Jencks Act (18 U.S.C. §3500).

The actual trial consumed eight weeks. In light of the complexity of the crime charged, the number of defendants in-

volved, and the problems of law and evidence presented, the trial time consumed was minimal. It is my opinion that this trial would have consumed a minimum of six months, without continuous planning.

Details Dealt with in Advance

One of the key reasons for this minimization of trial time was that so much detail was dealt with far in advance of trial. On Monday, June 15, 1959, the Apalachin case was assigned to me for all purposes. During that same week an agenda for the first pre-trial conference was drafted and it was held one week after the initial assignment. Counsel for the government and the defendants attended.

While this first pre-trial could deal only with problems that were apparent far in advance of trial, it was extraordinarily fruitful. It was apparent immediately that there would be a deluge of pre-trial motions, so at this first session a schedule for the presentation and argument of all motions was arranged. After setting the trial date for October 26, August 26 was fixed as the date for the submission of all motions and supporting briefs, with oral argument to be had on September 10. All of these dates were met because they took into consideration the needs of the attorneys and the Court. A trial is not always disposed of with dispatch and efficiency by putting undue pressure upon the attorneys. The best results may be obtained by making a realistic estimate of the time needed. The attorneys' summer vacations intervened between the trial date and the assignment of the case. To ignore that fact would have led to inadequate preparation which, in the long run, could only have prolonged the trial. Given adequate time the attorneys submitted generally excellent briefs on schedule and were fully prepared to go to trial on the date set.

Discussions were also commenced at this first meeting concerning the advisability of stipulating the authenticity of documents. Since most of these documents consisted of statements made by defendants and other alleged co-conspirators on other occasions, it was clear that unless this element were eliminated from the case, an incredible amount of time would be spent in wrangling over whether this word or that was accurately transcribed by the stenographer. In almost every instance, stipulations of authenticity were given. I would conservatively estimate that the jury was thus spared from hearing approximately 100 witnesses give the dull testimony that is usually the concomitant of authentication. In addition, thousands of dollars in witness fees and court and litigation costs were saved. It is impossible to estimate accurately the time saved by this one stipulation, but if I were to hazard an estimate it would be fixed conservatively in the neighborhood of two months.

I think it most significant that this stipulation did not cover *all* the prior transcripts. The defense counsel were not giving up a valuable right just to save time, but were merely refusing to invoke a power that could benefit neither their clients nor the ends of justice.

Spirit of Cooperation Engendered

This factor points up what I consider the most valuable result of the initial pre-trial conference, the spirit it engendered. While the defense was persuaded not to press its right to have authentication made during the trial, the government showed itself willing to make grand jury minutes and other statements of witnesses available in advance of trial, though in most instances it had a right to withhold the material until the trial had begun. Had the government chosen the latter course, weeks or months would have been consumed during the trial while defense counsel read and digested the material. Not only did the early access to documents given the defense make it possible for them to stipulate authenticity in advance, but it avoided this further waste of time. What occurred, in effect, was that technical powers were amicably traded,

with no loss of real rights, but with an inestimable gain for speed and efficiency.

Another development at this first conference was the emergence of spokesmen for the defense. There were a great many defense attorneys and all had the right and duty to represent their individual clients. But, there are many matters that can be efficiently handled for all defendants by one attorney, and the defense was encouraged to utilize spokesmen for those matters. To this suggestion the defense responded warmly, and motions and applications were thereafter handled with a minimum of repetition.

"Ground Rules" Established

As the trial date approached, further conferences were held. By that time it was possible to deal with other details. It was clear that counsel were entitled to have certain "ground rules" established. And so, at one of these early conferences, the length of the trial day was set consonant with fairness to all participants. The use of spokesmen was further encouraged and became a more fixed policy. I encouraged informal meetings among defense counsel to settle matters raised by the Court, and this intra-defense rapport led to a division of labor among defense counsel. Several were delegated to research the law necessary during the trial; others managed the arrangement of documentary material, etc.

The order of openings, closings and cross-examination were also agreed upon in advance. While in most cases, it had been the practice for counsel to proceed in the order their clients were listed in the indictment (i.e. alphabetically), I permitted the defense to set up its own order, subject to Court approval. This eliminated the confusion that would have occurred had no order been set. It also proved very important in connection with the cross-examination of witnesses. By relaxing rigidity the defense was enabled to lead off with its more experienced attorneys. Thus, the subject matter was usually exhausted quickly and competently, and it became frequently unnecessary for most of the attorneys to cross-examine at all.

Since the physical arrangement of the courtroom in a multi-defendant case is important, the attorneys were permitted to set up their own seating, subject again to the approval of the Court. If attorney "A" preferred to sit next to attorney "K", rather than attorney "B", I saw no reason why this should not be permitted. The defense felt that it required filing cabinets in the courtroom. Arrangements were made for the placement and storage of such cabinets. The court's staff was directed to render the same courtesies to defense counsel that they would to government counsel. Provision was made for a room that could be utilized by defense counsel to meet with each other, with their clients, and with witnesses.

I have not the slightest doubt that these details, too often overlooked, contributed immeasurably to the efficiency and dispatch with which the trial was conducted.

Even before the commencement of the trial, the results of prior planning and early conferences began to make themselves felt. With adequate time to prepare and submit motions, it became practical to decide them far in advance of trial. Thus, the bill of particulars ordered was submitted to the defense early enough to avoid a motion for continuance to study it. Furthermore, the litigants were apprised of the Court's rulings sufficiently in advance to allow them carefully to prepare their tactics in response to those rulings. This advance planning is reflected in the fact that only once during the entire case was it necessary to interrupt the trial in order to hold a hearing in the absence of the jury. That interruption lasted one day, and was scheduled so as to cause the least inconvenience.

Furthermore, the provision at one of the pre-trial hearings that *voir dire* questions be presented to the Court in advance made it possible to examine close to 200 prospective jurors in less than three days. As a result of this advance submission the

Court was able to formulate an integrated pattern of examination. It should be noted, *sua sponte* the Court excused 98 jurors in order to assure the defendants a trial by a jury unprejudiced by previous publicity.

Trial Began on Schedule

When the trial commenced, on the exact date it had been scheduled to begin, four months earlier, the conference technique did not cease. This was one of the most important lessons learned during the trial; the values of pre-trial techniques do not cease merely because the trial has begun. The rapport established before trial among the court, the prosecution and the defense, can be continued during the trial with benefit to all parties.

The following will illustrate the real gains that may be had by a continuation of this rapport. Besides the documents which had been turned over or made available to the defense in advance of trial, there existed a group of documents which would have to be made available to the defense under the so-called Jencks Act (18 U.S.C. §3500). Under that act, however, the government had the right to withhold inspection by the defense until the witness had testified. It was clear that if the government waited until that point, however, the defense would need time to read and consider the document for purposes of cross-examination. Furthermore, since under the act only relevant portions of the document must be shown to the defense, the Court had the task of examining the entire document in advance. Thus, strict adherence to the statute would have led to delay, while, on the other hand, turning over the document far in advance would entail surrender by the government of a right.

By discussing the problem with counsel it was possible to work out an acceptable arrangement. The government agreed to make these reports available to the Court the night before the witness was to testify. This entailed extra night work for the Court but that was preferable to allowing the time of the jury to be wasted while the documents were examined. The government also agreed that all the documents relevant to the testimony of that day's witnesses would be turned over to the defense before the day's session began. Thus almost no actual trial time was wasted.

In a similar vein, the government was encouraged to give the defense, a day in advance, the names of witnesses to be called so that defense counsel could have ready the papers and notes necessary for proper and speedy cross-examination.

When extraordinary evidentiary questions were raised, conferences at the bench or in the robing room were held. At that time a full discussion of the relevant propositions of law took place, and "spur-of-the-moment" rulings were not necessary. The Court ruled that all objections and exceptions would inhere to the benefit of all defendants if made by one counsel. This reduced duplicitous objections.

Time Schedules for Each Stage of Trial

Throughout the proceedings time schedules were drawn up for each stage of the trial. This was a continuation of the policy begun at the first pre-trial conference. Target dates were thus placed before the eyes of the participants and they were met to an astonishing degree. For example, I inquired as to the length of the direct testimony and cross-examination of each witness, the number of witnesses to be called that particular day, the time when the government's direct case would be finished, and the length of any rebuttal, etc. I am certain that this advance blueprinting of each day and target dates was of assistance to all the participants in the trial.

Time was saved also by attention to smaller trial details. For instance, it was inevitable that during such a long trial there would be days when defense counsel would absent themselves because of illness or other compelling reasons. A general procedure therefore was developed. If a

defense attorney had a pressing matter which necessitated his absence on a given date, he would obtain assurance from the United States Attorney that no evidence directly affecting his client would be introduced in his absence. Then he arranged, with the consent of his client, to have one of the co-counsel "cover" for him. Thus, most of the arrangements were made among counsel themselves, and only a moment was necessary in advance of the day's session to obtain the Court's approval.

Keeping 'On Top' of the Proceedings

It was extremely important because of the size and complexity of the case that the Court keep "on top" of the proceedings at every stage. As a result, the court reporter was directed to send the day's transcript to chambers at the end of each day. It usually arrived by 6:15 p.m. Nights and weekends could then be utilized in abstracting, cross-referencing and marshaling the evidence as it pertained to each of the 21 defendants on trial. The preparation of the charge, the delivery of which consumed almost four hours, was begun several weeks before the scheduled end of the trial. Counsel were requested amply in advance of the scheduled completion of the trial to present their contentions in regard to the factual evidence, and their requests to charge. In this fashion, any hiatus between the completion of the evidence and the charge to the jury was avoided.

I have set forth above some of the specific problems that faced the Court in the Apalachin prosecution, and indicated some of the methods utilized to meet those problems. However, my experience in this case has done more than to provide me with examples of specific problems; it has helped me to crystallize some thoughts I have had on the trial of the "big" criminal case. First, my experience during this case has strengthened my belief in the efficacy of pre-trial procedures in criminal cases. While no scientific formula can be set forth for the steps to be taken, since the problems and cases vary so vastly, a warm reception of pre-trial in the criminal case as a useful procedural weapon can furnish the incentive and starting point for such a formula. In a legally complex trial involving a large number of defendants, delay and confusion must be even more rigorously guarded against than in the run-of-the-mill case. The least lack of planning, or loss of control, may easily be magnified to render the entire trial impossible.

The purpose of pre-trial in the criminal case is the same as it is in the civil case: to establish communication among the parties leading to efficient procedures. Forces that might defeat that end while not aiding any party, are to be adjusted or relinquished. However, when the "big" trial is at the same time a criminal action, the balance between efficiency and protection of constitutional rights is a fine one, and the procedures must be developed with great care. No judge would think of bringing any pressure to bear upon counsel in a criminal case to relinquish important rights of his client merely in the interests of speed.

Presiding Judge Must Anticipate and Analyze Problems

A study of many large criminal trials, however, especially and most recently the Apalachin case, has convinced me that orderliness and fairness can be achieved only if the presiding judge takes the trouble far in advance of the actual presentation of evidence to analyze the problems that will or may come up. It is my considered opinion that counsel soon realize that it is in their clients' interests to assist the Court in formulating a rational plan of proceeding and are ordinarily aware that an orderly trial is itself one of the prerequisites to justice.

In order for the trial to be efficiently planned, however, some method must be adopted by which the case can be thoroughly analyzed. The most ordinary method of analysis is the anticipation in advance of trial of individual problems. For in-

stance, will this or that question of law arise? What kind of documents are involved and how do they have to be dealt with? What about the cross-examinations, the deployment of counsel, the order of presentation? If all the problems that might come up, particularly in a conspiracy case, could be foreseen in advance, such a method of analysis would be sufficient. But, in a truly complex trial it is unlikely that each specific problem can be anticipated.

The Dynamics of a Trial

In going over my experiences it has occurred to me that on occasions I have used a somewhat different mode of analysis with quite promising results. When a trial is analyzed it becomes a study in dynamics, an interplay of rights, powers and duties played within a relatively rigid closed system controlled by legal rules and physical limitations. The various parties, counsel, even the physical limitations of the courtroom, may be conceived of as "forces" which tend to shape the trial toward organization or disarray. For example, some valuable rights of defendants tend toward delay. That does not mean that they are not proper rights and should be eliminated. In some circumstances, for instance, the right to demand that transcripts be authenticated by testimony of the stenographer is necessary and proper. But, in other circumstances this "force" serves no purpose except delay.

Viewed in this light even the technique of holding pre-trial conferences and continuing those meetings during the course of the trial becomes merely a specific aspect of this management of disparate "forces". It is clear that if they are to be channelled they must be directed from a common point. From his position as a neutral participant, overseeing all the elements of the case, the judge has the task of marshaling these diverse and divergent "forces". In doing so he has certain legal powers of his own, for example, to fix the time of trial, etc. However, if all the diverse "forces" are effectively to be controlled the co-operation of all parties must be enlisted.

It is for this reason that the technique of scheduling meetings among all participants in the presence of the Court is so valuable. At the early meetings the judge can persuade both the government and the defense to recognize that delay and confusion will not contribute to fairness or justice. More important, he can devise and present formulae whereby the adversaries can communicate with each other and arrive at agreements and concessions outside the presence of the Court. Once the channels of communication are opened by the judge, the results are gratifying.

Moreover, the judge has the task, a trifle homely but nevertheless most necessary, of making certain that the "housekeeping" of the trial is managed with no unseemly delay or confusion. It is my belief that if the physical arrangements for counsel are confused and unfair, their work product will tend to be the same. However, it must be emphasized that while a judge should do all he reasonably can to make matters convenient for counsel, and foster a spirit of co-operation, he must remain in complete control of the courtroom and the trial and must never relax his authority. If the Court permits decisions to be enforced upon him by counsel, disorder and bickering will result. It is at all times predominantly the judge's task to channel the forces that shape an orderly and just trial.

It is impossible to discuss all of the many problems encountered in this "big" criminal case. I have already indicated that because of the many distinct problems which arise in large criminal cases, it is difficult to generalize on the specific manner in which the trial and pre-trial should be conducted. Nevertheless, guides along the path can be set up which will assure a more direct and orderly route to a fair verdict, without detours, side excursions or a complete breakdown of the administration of justice.

Organization and Jurisdiction of the Courts of England

by LORD GODDARD

HAVING tried to tell you how our judges are selected, perhaps I may describe as briefly as I can the way the work is distributed and generally how the system of justice in England is worked.

In the High Court there are three divisions, Chancery, Queen's Bench and Probate, Divorce and Admiralty. I will explain the origin of that Division which deals with three such different subjects later on.

The Chancery Division is manned by five judges; till quite recently there were seven, but the work has decreased so much that it is found that five can satisfactorily manage it. To this division are assigned all matters formerly dealt with by the old Courts of Equity. They consist of administering the estates of insolvent deceased persons and all matters relating to trusts, partnership actions, redemption and foreclosure of mortgages, rectification and cancellation of written instruments, actions for specific performance of contracts of sale and lease of real estate, the wardship of infants entitled to money and a good many kindred matters. This division also exercises the jurisdiction in bankruptcy and the winding up and other matters arising under the legislation relating to joint stock companies. As soon as any cause or matter is initiated, it is assigned to one of the judges chosen by ballot, who has charge of the action from beginning to end, though the bankruptcy and company jurisdiction is assigned to a particular judge by the chancellor. The general supervision is undertaken in practice by the senior judge, though the chancellor is as I have said, the nominal head of the division. Each judge has a staff of masters to assist him; they attend to all the interlocutory work and hold inquiries which may be directed by the judge. These masters are all solicitors who have had experience in dealing with the matters that are heard in that division. The judgments and orders are often long and in some cases complicated, and so there is a trained body of officials known as Chancery Registrars who draw them up.

Queen's Bench Division

Then there is the Queen's Bench Division composed of the Lord Chief Justice, who ranks immediately after the Lord Chancellor, and now 27 judges. When I was called to the bar 60 years ago there were only 14, but the business has increased so much that the present number is only just enough. As you will hear, the Queen's Bench judges have to try the more serious criminal cases and it is unfortunately true that crime has very greatly increased in recent years so that a regrettable amount of judicial time is taken up in trying it. In this division are tried all common law cases; actions for personal injuries are far and away the most numerous, but there are always libel and slander actions for trial, breaches of contract, claims arising out of the sale of goods and the like. There are two or three judges who have special knowledge of commercial law, by

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This was the second address delivered before the National Conference on Judicial Selection and Court Administration by Lord Goddard, former Chief Justice of England. The first, "Politics and the British Bench," appeared in the December Journal.

which I mean cases concerning marine insurance, charter parties and bills of lading, banking and stock exchange transactions.

Arrangements are made for a special list of these cases to be kept and a judge is placed in charge of that list for a year at a time, during which he will not have to leave London for a circuit. There has always to be a judge in chambers every day to take interlocutory appeals and certain other matters that are not dealt with in open court. Then the judges of this division are the judges of the Court of Criminal Appeals over which the Lord Chief Justice presides and two others always, and sometimes, for a really important case, four sit with him. He selects the members of the court from among those who are in London and not on circuit; the court sits each week usually on Mondays and the chief usually tries to give each judge a chance of sitting with him every term.

The numbers of applications for leave to appeal, which have to be obtained in most cases, have very greatly increased in recent years and the burden on the judges who have to read the transcripts of evidence before the sitting of the court is very great. Most of the applications for leave to appeal against conviction are completely frivolous —not more than roughly 4 per cent are granted; if leave is given the appeal will be heard probably the following week. Rather a higher percentage of applications for leave to appeal against sentence only is granted: they do not take much time and quite often the court will reduce a sentence on hearing the application, treating that as the hearing of the appeal. But all these involve reading the transcript of the trial.

A very important part of the work of this division is hearing appeals on points of law from Magistrates Courts and dealing with applications for writs of habeas corpus, certiorari, mandamus and prohibition. For this work the court consists of the Lord Chief Justice if he is available, as he usually is, and two others whom he selects. Ordinary trials in this division are not assigned to particular judges; cases are tried in the order in which they are set down in the central office and are allotted among the judges available.

The Assizes

I must now say a word about the circuits, which take up a great deal of judicial time. Each county in England and Wales, and there are 52 of them, have three assizes a year, though for one of them certain of the smaller counties are grouped together. In addition some of the big industrial cities such as Manchester, Birmingham and a few others also have an assize in addition to that for the county in which they are situate and generally have an extra assize. There are seven circuits which between them embrace the whole of the counties and towns in which assizes are held. Always two, and in busy places three, Queen's Bench judges go out on every circuit, though some of the less populous places will be visited by only one. They try both civil and criminal cases. The latter must be tried and with the unfortunate increase in crime, both in numbers and the length of trials, it happens from time to time that both judges on a circuit have to deal with them and then the civil cases have to be adjourned. Work on the circuits is a constant anxiety to the Lord Chief Justice; he has to see there are enough judges in London to deal with all the work and at the same time he is often pressed to send an extra judge to help at an assize town where the work is heavy.

As with you in a criminal case a judge always sits with a jury but it is remarkable how few litigants in the civil courts apply to have their case tried by jury; in I suppose 90 per cent of the cases they are content with a judge alone. Before the first World War the vast majority of civil cases were tried by judges with a special or a common jury. Lack of man power during the war caused a change and parties only

had the right to a jury in cases of defamation, false imprisonment, malicious prosecution, seduction, breach of promise of marriage and where an issue of fraud was raised. In other cases a jury could only be obtained by leave and it was remarkable how few applications were made. Between the wars parties could put their cases down for trial with a jury but a comparatively few did so, except in the case of those actions which I have just mentioned and which are particularly suitable for jury trial. When the last war started the same rule was enforced and during its continuance I do not suppose 50 cases were tried with a jury, and since the war most litigants seem to prefer trial by judge alone. Actions for damages for personal injury cases tried in the Queen's Bench Division account for more than 60 per cent of the cases tried in the Queen's Bench Division and I think it is largely due to the fact that judges seem to give larger damages to successful plaintiffs than juries do that we have so few of the latter. There is still a list kept for setting down cases to be tried with juries, but it is the exception to find cases other than claims for libel and breach of promise of marriage (and there are very few of these) in it. A case tried by a judge alone takes as a rule far less time than a jury action. If trial by jury again became common, I fear that there would be great difficulty in keeping the lists up to date, especially at the assizes where the judges have a limited time at each town.

The Old Bailey

For London and the metropolitan area the principal criminal court is The Central Criminal Court, generally called The Old Bailey from the name of the place where it sits. The court is held once a month and a high court judge attends to try the more serious cases. There is a staff of four judges attached to the court, the principal one being the Recorder of London, whose office is very ancient and of great dignity, and they dispose of all the cases except the few that are put in the judge's list.

I hope what I have said will show you the great variety and volume of the work that falls to the Queen's Bench judges. To keep the courts working smoothly is the most difficult task that the Lord Chief Justice has to perform and I can speak with some knowledge as I held that office for 12 years. It is a constant anxiety to ensure that there are enough judges in London to deal with the work that must be done there and at the same time to keep the Circuits running satisfactorily. Occasionally the Lord Chancellor has to appoint a Commissioner of Assize to assist on circuit; this will be a Queen's Counsel who is appointed *ad hoc*. He has all the powers of a judge during the time that he is assisting in the particular Circuit to which he is appointed, and it is only a temporary appointment.

Probate, Divorce and Admiralty Division

Then there is the Probate, Divorce and Admiralty Division consisting of a president and nine judges. A humorist once referred to it as the Wrecks Division as it deals with wrecks of wills, wrecks of marriages and wrecks of ships. The reason why three such widely differing subjects are dealt with in one division is because till the middle of the last century the proof of wills and issues as to their validity were all dealt with in the ecclesiastical courts. From the earliest times they were the exclusive concern of the archbishops and bishops; so too were matrimonial suits, though those courts could not dissolve marriages they could grant decrees of separation and nullity. The judges and practitioners in those courts were not common lawyers: they were always called civilians as being learned in the civil law of robe and the canon law of the Church. They also presided in and practiced before the High Court of Admiralty; the law of the sea was of an international complexion and no part of the common law. In 1854 a Court of Probate was established which absorbed the jurisdiction of the ecclesiastical courts

over wills and in 1857 for the first time a Court of Divorce was created. The civilians continued to practice in those courts so when the High Court of Justice was established in 1873 those two courts and the High Court of Admiralty were formed into one Division. They were thrown open to the bar and so the Civilians as a separate order gradually disappeared.

Divorce supplies by far the greater proportion of their work. Unfortunately some 20,000 petitions for divorce are presented annually; the judges of this division go on Circuit with the Queen's Bench judges, though not to so many places, and assistance is given by the county court judges and some specially appointed commissioners. Interlocutory proceedings in contested cases and the common form business in probate are in the hands of registrars who are all appointed from the bar.

A Divisional Court, consisting of the president and one other judge, hears appeals from Magistrates Courts which have jurisdiction to grant orders of separation to wives on the ground of cruelty or failure by the husband to maintain. The most anxious work of this division is in relation to the custody of the children of divorced couples and the granting to the parent who has not the custody reasonable access until the children attain the age of 16 when usually they can choose for themselves.

The Court of Appeal consists of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls and the President of the Probate Divorce and Admiralty Division as ex officio members and eight Lords Justices of Appeal. In practice the Master of the Rolls is the permanent president and manages the business of the court but occasionally an ex officio member will sit if a Lord Justice is absent. The court sits in three divisions, each consisting of three members. Lords of Appeal, who are the judicial members of the House of Lords, are also qualified to sit in the court. I have known a Lord Chancellor to give assistance there, but not for very many years as his other duties fully occupy his time. I was a Lord of Appeal before I was Chief Justice and sat in that Court of Appeal a few years ago for three months during the illness of the Master of the Rolls, and from time to time I sat there as an ex-officio member during my time as Lord Chief Justice. The Master of the Rolls can also request any judge of the high court to give occasional help in this court and not infrequently does so. The court hears appeals from all divisions of the high court. In practice an appeal from the Chancery Division will be heard by a court, two members of which were formerly judges of that division and one who was a common law judge, while an appeal from the Queen's Bench will be heard by two former common law judges and a former Chancery judge. Admiralty appeals are very few and will probably be heard by three common law members and of late years there has always been a member promoted from the Probate Divorce and Admiralty Division who will sit with two other members to hear appeals from that division. It is a most important court, as no appeal lies from its decision except by leave which can be granted either by the court or by the Appeal Committee at the House of Lords if the court refuses leave.

Appeal to the House of Lords

If leave to appeal is granted the appeal lies to the House of Lords. In the early days of Parliamentary history an appeal lay to the Sovereign in his Court of Parliament, but in the 15th Century the House of Commons petitioned the King to be relieved of judicial work for which they had no training or aptitude, and thereafter appeals were heard solely by the lords. In modern times there are nine Lords of Appeal in Ordinary, that is paid members of the House who ordinarily sit to hear appeals, and in addition members of the House who hold or have held high judicial office can and do sit not infrequently. The Lords of Appeal also have to sit in the Judicial Committee of the Privy Council

which hears appeals from the courts of the crown colonies and from such of the dominions in the Commonwealth as have not abolished the right of appeal. Australia and New Zealand are now the only two dominions from which appeals are brought, though a good many come each year from the colonial courts. In the House of Lords the Lord Chancellor presides if he is able to be present; in his absence any former Chancellor in attendance presides; but if neither the Chancellor nor an ex-Chancellor is present the senior Lord of Appeal in Ordinary presides whether or not he is the senior in the peerage of those attending.

Inferior Courts

Time will only permit me to deal very shortly with what are called the inferior courts though they are of great importance as the resort of the poorer classes of the community. For civil matters England is divided into some 60 county court districts. The judges, and in some populous parts there may be two, live in their district and hold court once or twice a month at the various towns comprised therein. Their ordinary jurisdiction is limited to claims not exceeding 400 pounds but a great deal of work is placed in their hands. Debt collecting forms the major but not the most important part of the business of the courts, and a great deal of the judge's time is occupied in deciding by what installments and over what period the debt is to be paid, involving as it does a patient enquiry into the debtor's means. Appeals from their decisions lie direct to the Court of Appeal but unless the amount involved is over 200 pounds (roughly $600) there is no appeal on fact, but only on law.

The inferior criminal courts are Magistrates' Courts and Courts of Quarter Sessions. It is calculated that the justices of the peace who form Magistrates' Courts dispose of at least 90 per cent of all the criminal charges in the exercise of their summary jurisdiction. But do not think these are all charges involving what I may call moral criminality. Far and away the largest proportion are motoring offenders of one sort or another. The more serious part of their work is first acting as examining magistrates, investigating criminal charges to see in those cases which must go for trial at a higher court, whether there is a prima facie case and if so to commit the accused for trial either in custody or on bail. Thus, in a large number of cases such as larcenies, and false pretences, the accused is given the option of being tried by the magistrates or of exercising his right to go for trial before a judge and jury. If given the option an accused person almost always elects to be tried by the magistrates: the case is quickly disposed of and the court cannot award more than six months or a fine not exceeding 100 pounds; he knows he may get a stiffer sentence if he goes for trial. But magistrates are not bound to deal with the case when the prisoner elects for trial before them; if on hearing the evidence the court considers the case too serious, they refrain from deciding it and commit it for trial. This nowadays seldom happens as power has been given to Magistrates' Courts to convict an accused person and send him to the Quarter Sessions for sentence if they do not consider their powers of sentence adequate.

Jurisdiction of the Quarter Sessions

Quarter Sessions consist of all the justices in a county presided over by a legally qualified chairman. Not more than nine justices can sit and attendance is at the present day regulated by a rota. They try the majority of indictable crimes, but the more serious are sent to the assizes to be tried before a judge of the High Court. Some statutes creating offences provide for trial only at assizes, but generally speaking Quarter Sessions can try any cases other than those for which on a first conviction a life sentence can be given. As a general rule Quarter Sessions would hardly if ever impose a sentence of more than five years; if the case were so serious as to merit a longer sentence

it would be commited to the assizes. A Committee of Quarter Sessions is also established every year to hear appeals from Magistrates' Courts of summary jurisdiction. From those courts an appeal on a question of law lies to the High Court but an appeal on fact lies only to Quarter Sessions who rehear the case, all the witnesses being recalled before them. Most of the large boroughs have their own Court of Quarter Sessions to which accused persons are committed instead of to the county sessions. A borough Court of Quarter Sessions is held before the recorder of the borough who is a member of the bar of some position, appointed by the Lord Chancellor and holds office till he attains the age of 72. He is the sole judge of the court both for holding trials and hearing appeals from the Magistrates' Courts of the borough.

I fear I have detained you far too long with this imperfect sketch of the various courts in my country and the way they work. To fully explain the history and working of the Magistrates' Courts alone would take many hours and there are still many other minor courts in England of limited jurisdiction but only very few now function; all are controlled in a greater or less degree by the High Court. The ancient courts with a still active life are the Liverpool Court of Passage, the Salford Court of Record at Manchester, the Tolsey Court at Bristol and above all the Mayor's Court in the City of London; they have unlimited jurisdiction over cases arising within defined areas and are not only picturesque but useful survivors of a time when every corporate borough had its own civil and criminal courts. If I have wearied you I crave your forgiveness and thank you for so patient a hearing.

The Implications of the Chessman Case

By EDMOND J. CLINTON

CARYL Chessman's execution is an event of history. Now it is timely to consider the Chessman case in the light of its implications for the administration of justice.

The case evoked great public interest, and widespread criticism. Much of both were expressed in overt, dramatic forms. A good deal of the criticism—both foreign and domestic—was directed against the American system of justice. Most of the critics were upset about the long delay involved in finally deciding Chessman's fate.

Abroad, the case assumed the proportions of a *cause celebre*. Public opinion almost without exception took the view that Chessman should have been reprieved on humane (rather than legal) grounds. The people—even some governments—said: "He has suffered long enough. He has paid his debt. It is wrong to inflict a 12-year wait upon a man you're going to execute. *Save Chessman!*" Thus ran the common thread of foreign criticism. American justice was condemned.

At home, opinion was split. A minority

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demonstrated for Chessman's pardon, or a commutation of his sentence, on the grounds that he had been exposed to "cruel and unusual punishment." Some of the last legal appeals, also, asserted that Chessman had been subjected to "cruel and unusual punishment" (because of his prolonged confinement on "death row"), in violation of his constitutional guarantee of freedom from such punishment. On the other hand, the majority of Americans seemed to react against Chessman and his numerous appeals with disgust. "No—not again!" was the exclamation on many lips when Governor Brown announced a 60-day reprieve for Chessman. Other voices cried: "Let him die, he's had his chance." And such remarks as the following were not uncommon: "He's had too long already," "He's already been turned down by practically every court in the land!" "He's become a hero," "He's made a mockery of the law!"

And many thought: *No poor man could get away with it.*

At this point, the lawyer interposed: "He has the right to appeal, hasn't he? As often as he can? As often as our law permits?"

The citizen answered: "He's used the money from his books to go on and on. . . . No poor man could get away with it."

The citizen continued: "Too many appeals. . . . too many technical loopholes in the law."

The lawyer answered: "Where would you stop him? Where would you draw the line and say, 'Now he can appeal no more'? or, 'He cannot appeal this point or that'?"

But the lawyer wondered about his own answer.

The Foreign Reaction

And so the Chessman case has called forth a flood of comment, discussion and outcry unparalleled in recent years. It must be recognized that a lot of the hue and cry was based upon some ignorance at least of our ways of justice. This is especially true of the foreign reactions to the case. "Only a very few foreign commentators noted the extreme care for Chessman's rights," notes J. M. Roberts, AP news analyst. Indeed, an argument can be made that Chessman had every right, protection and opportunity which our judicial system could have provided. As Roberts succinctly states:

> Here is a man who has been given every consideration under law. . . . He had money, a series of lawyers, and above all he was given time. It was he, not society, who prolonged the anguish. Judges of great legal ability and great humanity, from the highest to the lowest, heard his pleas over the years and regularly turned him down. . . .

Important Questions Are Being Asked

It is undeniable, nevertheless, that the Chessman case gave rise to an uneasiness at home which has not died out. It has focused public attention on several critical and sensitive areas of our criminal law and its administration. Citizens and lawyers alike are asking important questions.

What did Caryl Chessman have? He had money, time and law. With these, did he make a "mockery" of the law? Or did his treatment represent our due process ideal?

Did his money give him advantages unavailable to poor, less resourceful defendants? These latter (far more numerous than the rich) are equally entitled to a highly competent, diligent, painstaking defense. *Did* Chessman do what no poor man could? Let us be straight in our thinking here: there is no sin in having money. The important thing is to be certain that those without it get the same consideration and quality of defense as those with it. How adequate are our public defender, legal aid and court-appointed attorneys systems nationwide? Are we satisfied that the communities and judicial districts up and down and across the land are yet proud enough examples of "equality under law" (the glittering boast of American justice)? Some are proud examples. Many are not. The truth is that there is no reason for complacency or self-satisfaction, no excuse for

relaxing our efforts to press forward—geographically and otherwise—toward the day when we may make the boast of "equal justice" with quieter consciences.

Time can mean opportunity. Or time can mean delay; and delay may defeat the cause of justice. Which was it in Chessman's case? Necessary, adequate time and opportunity? Or unseemly, unfair and unjust delay? Did not the 12-year lapse between sentencing and execution reflect badly on our legal processes and procedures? Like every defendant, Chessman was entitled to every feature of our law, and to every defense and every appeal our law permits. But let us not forget that for excellent reason the American Bill of Rights promises a defendant in a criminal prosecution "the right to a speedy and public trial." Probably reasonable speed should characterize the appeal process too, for there is a real possibility that, according to a familiar quotation, "justice too long delayed is justice denied." *Efficiency* must bow to *due process* when the two are in conflict, and the *efficient* administration of justice must always allow for this. Still, we must improve the administration of justice wherever it is reasonable and fair to do so. We must tighten purely administrative functions and bring more order, management and efficiency to the conduct of the business of our courts. We must devote more judges and more judges' time to the handling of cases, and handle cases more expeditiously where this is possible. We must break the great backlog of cases which contribute to delay. We must do all these things and more—so to come closer to serving defendants in accordance with their legal, moral and constitutional rights. Pertinent are the words of Ralph McGill, publisher of the Atlanta *Constitution:* "No written guarantee is valid unless the people respect and support it."

And what of the law itself? "Outs," "gaps," "loopholes"—are there such? Are there too many? Are there some it is time to eliminate? Did Chessman avail himself of portions of the law which never should have been enacted, or which, once enacted, have become archaic and now should be removed? Whatever fails to provide to our people the kind of substantive and procedural protections we desire and have come to expect (regarding them as among our richest legacies) should be eliminated.

The defendant Caryl Chessman is gone, but his case has left many questions. Layman, lawyers and jurists alike now have a unique opportunity for reflection, scrutiny, examination and reexamination.

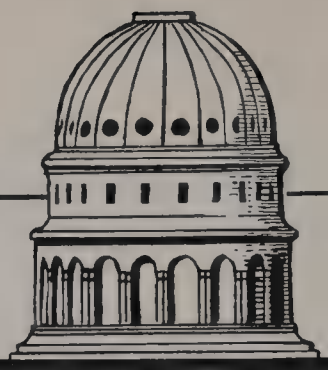
Improvements Can Be Made If Profession Seizes the Initiative

We must welcome and respond to the public interest awakened by the case. It is a well known fact that judicial reform is hard to come by in a vacuum drained empty of a responsive public interest. Today the time is ripe. Improvements may be effected. It is those who have made the law their profession and their life who must seize the initiative and furnish the leadership. Essentially, this is the challenge and the opportunity which confronts the American bar and bench.

As we proceed with fervor and diligence to the job at hand, let us remember that the job is no petty chore, no menial housekeeping task. It is a job which should touch the deepest stirrings of all who love the law and so are moved to do that which is eternal in and of the essence of the law—if the law is to keep evolving in order to secure, serve and protect both the social interest and the interest of the individual. The balancing process goes on unceasingly. Respect for the law is one of society's profound affections. It must not be shaken. And it is a tribute to the glory of America that our society is equally anxious to protect the rights of each of its individual members (regardless of wealth, wit or station) who may be hailed before the bar of justice.

These are the great questions and directives of the Chessman case.

The March of Progress



Federal Judgeship Bill Approved by House Committee

Approval by the House Judiciary Committee of a cut-down version of legislation to create new federal judgeships gave hope for its passage before adjournment as Congress reconvened after the convention recess. The bill would provide for 35 new federal judges: one additional judge for each of the second, fourth and fifth circuit courts of appeal; and 32 new judges for the federal district court, 28 of which would be permanent appointments and four temporary.

The Judicial Conference of the United States, with the endorsement of the Justice Department and the President, had recommended 54 new judgeships to handle the growing caseloads and end delays up to five years in bringing federal actions to trial.

The Democratic Congress has been reluctant to give 35 appointments to a Republican president, although there are currently about an equal number of Democrats and Republicans on the federal bench.

Chairman Celler (D. N.Y.) said approval of the bill by the House Committee, after the four year stalemate, followed Attorney General William P. Rogers' reassurance that the one half of the appointments which are to be Democrats would be cleared with the party leaders.

Attorney General Rogers has also pointed out that no vacancies can now be filled before Congress adjourns, leaving them to the president who will be elected this November.

Utah District Court Judges To Wear Judicial Robes

Following a trend established in other states, Utah District Court judges voted at their annual meeting in June to wear judicial robes while presiding in court. The vote was taken after hearing a brief discussion by Chief Justice J. Allan Crockett of the Utah Supreme Court, in which he referred to the traditional black robes as "symbolic of the authority and the responsibility of the high and important calling in which we as judges are privileged to serve."

Wearing of robes by judges became mandatory in California and Wisconsin last year (October, Journal), and, in February, Vermont County Court judges voted to wear robes beginning with the March term.

Increased Backlog Reported in New Jersey Courts

A 36 per cent increase in the backlog of civil cases was announced in a report issued last month by the administrative office of the New Jersey courts. The number of active cases on the calendars of the county and superior courts rose from 12,983 on June 30, 1959 to 17,753 this June 30. The number of cases which have been on the calendar for 12 to 18 months has almost tripled and the backlog is increasing at a rate of 300 or 400 cases a month. Only the criminal divisions of the superior and county courts decided more cases than they received last year.

For three consecutive years the state senate has rejected bills to enlarge the 38-judge Superior Court to 47 judges. During the last session, however, the legislature did pass bills creating 10 new judgeships. In May, it added two judges to the district court of Monmouth County. And, in June, eight county judges were added to the counties with the largest backlog—Bergen, Essex, Hudson, Middlesex. The Superior and County Courts in these four counties have a total of 10,488 pending cases, more than half the entire state's backlog.

Governor Meyner said he considered the county judge measure only a partial solution. He urged the adoption of legislation to enlarge the Superior Court to alleviate the log-jam, which Chief Justice Weintraub describes as "critical."

Citizens Group to Help Survey New York Court Services

A committee of laymen has been formed in New York City to aid a judicial committee in a survey of professional and social services in the city's courts that handle family and youth problems. Mayor Robert F. Wagner and Presiding Justice Bernard Botein of the Appellate Division, First Department, announced the creation of the Citizens Committee on Social Services for the Courts last month.

This group, headed by John A. Coleman, former head of the New York Stock Exchange, will collaborate with the judicial committee headed by Justice Botein, which was appointed by Mayor Wagner last July and has already begun work. An appropriation of $120,000 has been made by the city to help finance the survey, which will cover social and professional services now available or needed in the Court of Domestic Relations and all of the criminal courts in the city. It will also cover probation, psychological, medical, detention and legal-aid facilities. The survey and recommendations probably will be made public in July, 1961.

California and Louisiana Judges Receive Salary Increases

Effective July 1, all California judges received a five per cent pay raise under the general increase voted for state employees by the last session of the state legislature. The increases were from $28,000 to $29,400 for the chief justice of the Supreme Court, from $26,000 to $27,300 for the associate justices, from $24,000 to $25,200 for the judges of the district court of appeal, from $20,000 to $21,000 for superior judges in counties with more than 100,000 residents, and from $18,000 to $18,900 for superior judges in the smaller counties. These salaries are paid entirely by the state, but municipal judges, whose salaries are paid locally, will also benefit. In counties where the population exceeds 250,000, municipal judges pay went from $18,000 to $18,900.

The last session of the Louisiana legislature raised the salaries of the associate justices of the Supreme Court from $18,000 to $22,500 and the chief justice's salary from $18,500 to $25,000. The basic salaries of the district judges, which are supplemented by various local jurisdictions were raised from $10,000 to $12,000.

The Society maintains a nation-wide judicial salary schedule that is available at one dollar a copy. Readers are invited and urged to send the Society information as to other judicial salary legislation for publication in future issues of the Journal and to help keep the judicial salary schedule up to date.

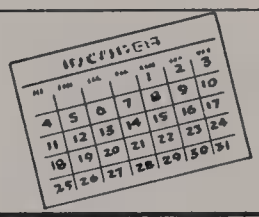
Items in Brief

A televised trial is as much a public spectacle "as if it were held in the Yankee Stadium or The Roman Coliseum," said Justice William O. Douglas of the United States Supreme Court in a recent address at the University of Colorado. Pointing up his disagreement with the Supreme Court of Colorado, which has adopted a canon specifically permitting courtroom photography and broadcasting, the justice cited the recently-televised trial in Baghdad of a group accused of a plot to assassinate Premier Karim el-Kassem.

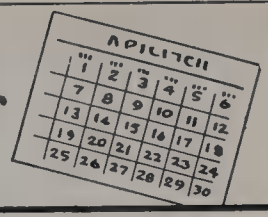
"The role of the lawyer in the economic and social development of his country within the framework of the rule of law" is the title of an essay contest being sponsored by the International Commission of Jurists. Deadline is December 31, 1960; first prize is 2,000 Swiss francs ($465). For details, write to the Commission at 6, Rue du Mont-de-Sion, Geneva, Switzerland.

A preferential primary was conducted for the first time last month by the Oklahoma Bar Association to determine the bar's preference in two contested judical elections. Incumbents Harry L. S. Halley of the Supreme Court and John C. Powell of the Court of Criminal Appeals, received heavy majorities.

A law clerk will be employed for each of the seven justices of the Wisconsin Supreme Court at $6,000 a year, under a new state law effective July, 1961.



Bench and Bar Calendar



August

4-7 —The Virginia State Bar Association, White Sulphur Springs, West Virginia.

7-13—International Law Association, Hamburg, Germany.

22-27—National Conference of Commissioners on Uniform State Laws, Washington, D. C.

23-25—Maine State Bar Association, Rockland.

23-27—Conference of Chief Justices, Baltimore and Washington, D.C.

23-27—National Conference of Court Administrative Officers, Baltimore.

24-27—National Association of Women Lawyers, Washington, D. C.

25-30—Junior Bar Conference, Washington, D.C.

26-27—National Association of Defense Lawyers in Criminal Cases, Washington, D.C.

26-30—National Conference of Bar Secretaries, Washington, D.C.

27-28—National Conference of Bar Presidents, Washington, D.C.

27-28—National Conference of State Trial Judges, Washington, D. C.

27-31—American Law Student Association, Washington, D. C.

29-September 2—American Bar Association, Washington, D. C.

29—National Conference of Bar Examiners, Washington, D.C.

30—Judge Advocates Association, Washington, D.C.

31—American Judicature Society, Annual Meeting, Washington, D. C.

September

1-3 —The West Virginia Bar Association, White Sulphur Springs.

3—Bar Association of Puerto Rico, San Juan.

5-9 —Union Internationales des Advocats, Switzerland.

5-10—Canadian Bar Association, Quebec.

7-8 —Judicial Conference of the Third Circuit, Atlantic City, New Jersey.

8-10—Judicial Conference of Second Circuit, Manchester, Vermont.

8-10—Washington State Bar Association Yakima.

8-10—Wyoming State Bar, Casper.

12-16—A.B.A. Traffic Court Conference, Knoxville.

14-23—Second Commonwealth and Empire Law Conference, Ottawa, Canada.

16-17—The Federal Bar Association, Chicago.

21-24—Oregon State Bar, Gearhart.

22-24—The Indiana State Bar Association, French Lick.

26-30—State Bar of California, Los Angeles.

27-30—State Bar of Michigan, Grand Rapids

28-October 1—The Missouri Bar, St. Louis.

October

6-7 —Nebraska State Bar Association, Omaha.

7-8 —Vermont Bar Association, Manchester.

10—Rhode Island Bar Association, Providence.

10-14—International Association of Democratic Lawyers, Sofia, Bulgaria.

10-14—A.B.A. Traffic Court Conference, Chicago.

12-14—National Legal Aid and Defender Association, New York City

13-15—The Colorado Bar Association, Colorado Springs.

17-18—State Bar Association of Connecticut, Hartford.

21-22—State Bar of New Mexico, Carlsbad.

27-28—American Bar Association, Board of Governors, Chicago.

28-29—The West Virginia State Bar, Clarksburg.

November

9-12—American Bar Association Regional Meeting, Houston, Texas.

10-12—State Bar of Nevada, Winnemucca.

11—American Judicature Society, breakfast meeting, Houston, Texas.

30-December 3—Oklahoma Bar Association, Tulsa.

December

28-30—Association of American Law Schools, Philadelphia.

1961

January 23-27—A.B.A. Traffic Court Conference, Berkeley, California.

January 27-February 3—Inter-American Bar Association, Bogota, Colombia.

February—Interstate Bar Council, Seattle, Washington.

February 16-21—American Bar Association, midyear meeting, Chicago.

March 27-31—A.B.A. Traffic Court Conference, New Haven, Connecticut.

April 20-22—State Bar of Arizona, Scottsdale.

May 11-13—American Bar Association Regional Meeting, Indianapolis, Indiana.

May 17-20—American Law Institute, Washington, D. C.

June 5-9—A.B.A. Traffic Court Conference, New York.

June 14-16—Illinois State Bar Association, St. Louis, Missouri.

July 10-14—A.B.A. Traffic Court Conference, Denver, Colorado.

August 7-11—American Bar Association, St Louis, Missouri.

September 11-15—A.B.A. Traffic Court Conference, Knoxville, Tennessee.

October 9-13—A.B.A. Traffic Court Conference, Chicago.

November 29-December 2—Oklahoma Bar Association, Oklahoma City.

1962

April 12-14—State Bar of Arizona, Tucson.

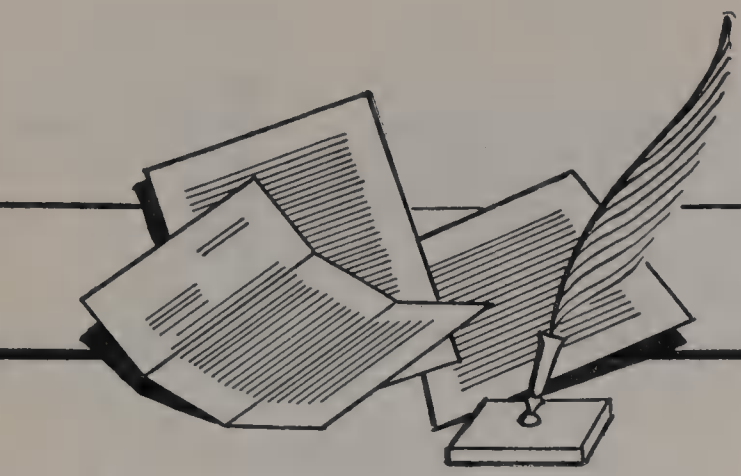
May 23-26—American Law Institute, Washington, D. C.

July 16-20—International Bar Association, Edinburgh, Scotland.

August 6-10—American Bar Association, San Francisco, California.

May 22-25, 1963—American Law Institute, Washington, D. C.

May 20-23, 1964—American Law Institute, Washington, D.C.



The Reader's Viewpoint

A Great Assistance

This is a little note of congratulations for the wonderful April issue of the Journal, and the fine exhibition of work which your office has done.

The lawyer of America is beginning to understand that there is a continual improvement in our courts, our lawyers, and the work that they do in covering the problems of the people in the continuing work of our courts. Your fine publication is a great assistance in that direction.

Please accept my kindest regards and may God bless you in your fine work.

WILLIAM H. ATWELL
United States District Court
Dallas 1, Texas

The Impact of "Things Federal"

One area of interest in the field of judicial administration has received too little thought. The impact of administrative agencies on general practice, and the difficulties arising from contact with such agencies are becoming increasingly numerous. Our so-called "fourth arm of government" has injected itself into everyday practice to such an extent that, in my opinion, it threatens to detract from substantive rights by compounding procedural burdens. In the clutter before me on my desk are letters from the Small Business Administration, the Bureau of Internal Revenue, the Farm Home Administration and the Veterans Administration. The SBA is attempting to inject itself into a transaction that it was not a party to and threatens my clients with the U. S Attorney; the BIR demands an oppressive amount of paperwork from a taxpayer on a deficiency claim of $120.00, after he had supplied all material previously requested; the FHA says that their attorneys, after advice of qualified bond counsel has been followed, demand that they get to second guess such counsel on matters of state law; the VA is requiring additional paperwork in a guardianship accounting, and taking the position that its approval overrides any decision or determination of our local court. And so it goes.

With the increased impact of "things federal" on us in our everyday life, justice threatens to become a scarce commodity. I would, therefore, respectfully suggest that increased attention be directed toward determining what the situation is with which we are faced, and then determining what course of action, if any, can be followed.

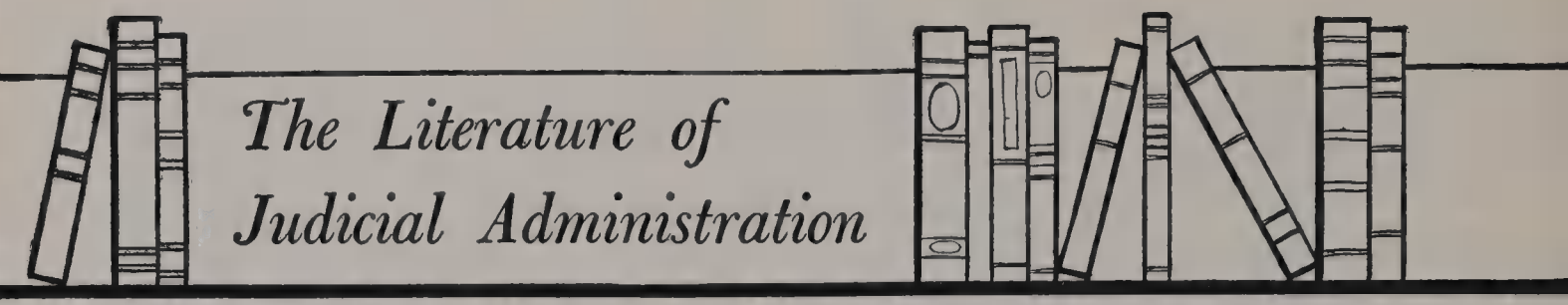
It is my opinion that the result would be needed reforms, saving of money, increased stature of the lawyer, and lastly and most importantly, the insuring of substantive rights to our clients in achieving a more efficient administration of justice.

GEORGE W. KILBOURNE
No. 1-3 West Jackson Street
Sullivan, Indiana

Back to the Whipping Post

It seems to me the most important question involving judicial administration is the matter of the killing and maiming of human beings on the highways of the nation. When we look at the statistics we are appalled and depressed. What do you think of restoring the old public whipping post for the punishment of these offenders?

C. L. WATTS
709-14 Terry-Hutchens Building
Huntsville, Alabama



The Literature of Judicial Administration

BOOKS

Courtroom Know-How,[1] by Joe H. Cerny, is a practical handbook written by a lawyer who never practiced, but who for 37 years as a court reporter studiously watched other lawyers at work before him, and, in an amazing way, learned how our profession should be practiced in its finest sense, and how it should never be practiced at all.

In the author's long-time career as a court reporter, he has not failed to observe and absorb the great riches of the legal profession. Here is a reporter who was not merely listening but living the law within the confines of the courtroom.

In this single book, containing 20 chapters and 313 well indexed pages, we find its author like a lawyer-father talking to his lawyer-son to save the son from falling into the pitfalls of the profession.

This free-lance observer of court proceedings has cleverly spiced his book with scattered anecdotes and examples, proverbs and humor, with reference to actual cases, thus giving zest to his work and making it delightfully interesting and useful.

The study of the law, this Emerson-Confucius philosopher tells us, reduces itself to the study of human nature. And in his one volume we have a master exposition on the philosophy of human relations. Although he does not say so directly, this handbook could well be the lawyer's counterpart of Dale Carnegie's book, *How to Win Friends and Influence People.*

If 19 of the 20 chapters of this book should have to be stricken out, I would save for legal posterity Chapter Two—"What Makes the Great Lawyer Great?" Here the author suggests that our law schools should give "adequate" attention to the study of the "the fine art of human relations." Indeed, special lectures on this key subject of the law, the author is too modest to recommend, should be included in the curriculum of every law school in the country. Success in the profession, he declares, "is due about 85 per cent to ability to understand people and deal with them agreeably, and about 15 per cent to purely professional skill." That ratio is important for lawyers to remember, for it may spell the difference between success and failure at the bar.

FRANK W. BRADY[2]

Norman Sherwood's *Detention Practice: Significant Development in the Detention of Children and Youth,*[3] published this spring by the National Probation and Parole Association, shows how the standards for juvenile homes set forth by the Association in 1958 have been translated into practice. A valuable guide for detention administrators and local and state governing bodies, the book discusses developments under 13 categories, among them admission control, staff development, supervision, guidance and clinical services. It also includes a brief description of 23 institutions representative of the best detention homes with respect to a particular standard.

Following the steps by which a court's decision is reached, William Zelermyer gives the reader a glimpse into the judicial mind in *Legal Reasoning: The Evolutionary Process of Law.*[4] Through an informal rather than documentary presentation of instructive cases, the author shows that legal reasoning involves

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1. Cincinnati, The W. H. Anderson Company, 1958. Cloth, pp. xvii and 326, $7.50.
2. Mr. Brady is a member of the bar of Manila, Philippines.
3. New York, 1960. Paper, viii and 221 pages, $2.50. (The new name of the N.P.P.A., adopted a few weeks ago, is National Council on Crime and Delinquency.)
4. New Jersey, Prentice-Hall, Inc., 1960. Cloth, xv and 174, $4.35.
5. Boston, Little, Brown and Company, 1959. Cloth, xi and 295 pages, $12.50.

more than the application of logic. It involves fitting a particular situation into the fabric of legal history through precedents, legislation or analogous situations.

Any book reviewed here or in any other issue of this Journal, or any other book in the field of judicial administration, may be ordered directly from the American Judicature Society, 1155 East Sixtieth Street, Chicago 37, Illinois. We also will be glad to procure for you, at regular single-copy prices, copies of periodicals containing any of the articles here listed.

The most discussed and most significant part of the country's law of evidence—restrictions upon discovery and compulsory disclosure—is comprehensively analyzed in *Evidence of Guilt*,[5] by John MacArthur Maguire. A study of the historical development of the rules is supplemented with timely material. Attention is given to the invocation of the Fifth Amendment and to the semantic difficulties that exist in the interpretation of the Federal Communications Act of 1934 with regard to wire-tapping. The rules regarding voluntary confessions, unreasonable search and seizure and the use of confessions obtained during illegal detention (the McNabb-Mallory doctrine) are also examined. The book provides law enforcement officers and prosecutors, defenders and judges with guides and suggestions for determining the admissibility of evidence and for affecting its admission or exclusion.

ARTICLES

Legal Organizations

"Bar Professionalism: The Antidote to Lay Practice of Law," by Harold F. Porter, Jr. Journal of the Missouri Bar, April, 1960, pp. 163-175.

"A New Look at the Professional Responsibilities of the Bar," by Reverend Robert F. Drinan, S.J. Rhode Island Bar Journal, April, 1960, pp. 3 + 8-9. (Bar must focus its attention on pre-trial publicity, judicial selection, and the moral and financial support of legal education.)

Courts

"A Look at Juvenile Court Procedures," by Francis A. Allen. The Journal, The State Probation and Parole Association of Illinois, April 1, 1960, p. 3. (Jurisdiction, evidence, and the right to counsel in a juvenile court must be clearly defined.)

"Public Relations of the Supreme Court," by Donald H. Dalton. Chicago Bar Record, May, 1960, pp. 409-412. (The Court should develop a positive public relations program; more complete coverage of its decisions is needed.)

Procedure

"The Caryl Chessman Case: A Legal Analysis," Minnesota Law Review, April, 1960, pp. 941-1013. (Concludes that Chessman was accorded all his rights, that the complexity of the legal issues did not warrent 12 years of litigation, and that judicial indecision was the principal factor which accounted for the delay.)

"The Physician as an Expert Witness—Some Psychological Aspects," by John J. Broderick. Personal Injury Commentator, September, 1959, pp. 16 20. (The law must learn to rely on the professional competence and integrity of the physician.)

"How to Do Pre-Trial in State Courts," by Vernon G. Bentley. Wyoming Law Journal, Fall, 1959, pp. 1-8. (Preparation of a case must be completed before pre-trial is begun.)

"The Pilot Institute on Sentencing," by Louis J. Sharp. Federal Probation, December, 1959, pp. 9-15. (Future institutes might provide a forum for the development of proposals to change sentencing legislation.)

New Members of the American Judicature Society

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